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Attorneys for Defendant  
Zurich American Insurance Company

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

NATIONAL RAILROAD PASSENGER  
CORPORATION, a District of Columbia  
corporation; and BNSF RAILWAY  
COMPANY, a Delaware corporation,

Plaintiffs,

vs.

CONTRA COSTA COUNTY, a California  
public entity, FLATIRON WEST, INC., a  
Delaware corporation; ZURICH  
AMERICAN INSURANCE COMPANY,  
a New York corporation; ALLIED  
WORLD ASSURANCE COMPANY, a  
Delaware corporation; and DOES 1  
through 25, inclusive.

Defendants.

Case No. 4:20-cv-00334-YGR

Assigned to Hon. Yvonne Gonzalez Rogers

**STIPULATED PROTECTIVE ORDER**

Action Filed: January 15, 2020  
Trial Date: None Set

**1. PURPOSES AND LIMITATIONS**

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information

1 or items that are entitled to confidential treatment under the applicable legal principles.  
 2 The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated  
 3 Protective Order does not entitle them to file confidential information under seal; Civil  
 4 Local Rule 79-5 sets forth the procedures that must be followed and the standards that will  
 5 be applied when a party seeks permission from the court to file material under seal.

## 6 **2. DEFINITIONS**

7 2.1 Challenging Party: a Party or Non-Party that challenges the designation of  
 8 information or items under this Order.

9 2.2 "CONFIDENTIAL" Information or Items: information (regardless of how it  
 10 is generated, stored or maintained) or tangible things that qualify for protection under  
 11 Federal Rule of Civil Procedure 26(c), including confidential or private information that a  
 12 Designating Party believes in good faith to contain: [ADDED]

13 (a) Trade secrets;

14 (b) Non-public communications with regulators or other governmental bodies  
 15 that are protected from disclosure by statute or regulation;

16 (c) Information reflecting non-public business or financial information and/or  
 17 confidential competitive information which, if disclosed, could result in competitive harm  
 18 to the disclosing party; or

19 (d) Information that is subject to data protection laws or other privacy  
 20 obligations, including but not limited to information subject to The Gramm-Leach-Bliley  
 21 Act, 15 U.S.C. § 6801 et seq.; Directive 9546/EC of the European Parliament and of the  
 22 Council of 24 October 1995 on the Protection of Individuals with Regard to the Processing  
 23 of Personal Data and on the Free Movement of Such Data, 1995 O.J. (L281/31); and the  
 24 German Federal Data Protection Act.

25 2.3 "CONFIDENTIAL – RESTRICTED" Information or Items: Highly  
 26 sensitive CONFIDENTIAL Information or Items, the disclosure of which would create a  
 27 substantial risk of serious harm that could not be avoided by designating the information or  
 28 items as "CONFIDENTIAL" under the terms of this Order.

1           2.4    Counsel (without qualifier): Outside Counsel of Record and House Counsel  
2 (as well as their support staff).

3           2.5    Designating Party: a Party or Non-Party that designates information or items  
4 that it produces in disclosures or in responses to discovery as “CONFIDENTIAL” or  
5 “CONFIDENTIAL – RESTRICTED.”

6           2.6    Disclosure or Discovery Material: all items or information, regardless of the  
7 medium or manner in which it is generated, stored, or maintained (including, among other  
8 things, testimony, transcripts, and tangible things), that are produced or generated in  
9 disclosures or responses to discovery in this matter.

10          2.7    Expert: a person with specialized knowledge or experience in a matter  
11 pertinent to the litigation who has been retained by a Party or its counsel to serve as an  
12 expert witness or as a consultant in this action.

13          2.8    House Counsel: attorneys who are employees of a party to this action.  
14 House Counsel does not include Outside Counsel of Record or any other outside counsel.

15          2.9    Non-Party: any natural person, partnership, corporation, association, or  
16 other legal entity not named as a Party to this action.

17          2.10   Outside Counsel of Record: attorneys who are not employees of a party to  
18 this action but are retained to represent or advise a party to this action and have appeared  
19 in this action on behalf of that party or are affiliated with a law firm which has appeared on  
20 behalf of that party.

21          2.11   Party: any party to this action, including all of its officers, directors,  
22 employees, consultants, retained experts, and Outside Counsel of Record (and their support  
23 staffs).

24          2.12   Producing Party: a Party or Non-Party that produces Disclosure or  
25 Discovery Material in this action.

26          2.13   Professional Vendors: persons or entities that provide litigation support  
27 services (e.g., photocopying, videotaping, translating, preparing exhibits or  
28 demonstrations, and organizing, storing, or retrieving data in any form or medium) and

1 their employees and subcontractors.

2 2.14 Protected Material: any Disclosure or Discovery Material that is designated  
3 as “CONFIDENTIAL” or “CONFIDENTIAL – RESTRICTED.”

4 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material  
5 from a Producing Party.

### 6 3. SCOPE

7 The protections conferred by this Stipulation and Order cover not only Protected  
8 Material (as defined above), but also (1) any information copied or extracted from  
9 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected  
10 Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel  
11 that might reveal Protected Material. However, the protections conferred by this  
12 Stipulation and Order do not cover the following information: (a) any information that is in  
13 the public domain at the time of disclosure to a Receiving Party or becomes part of the  
14 public domain after its disclosure to a Receiving Party as a result of publication not  
15 involving a violation of this Order, including becoming part of the public record through  
16 trial or otherwise; and (b) any information known to the Receiving Party prior to the  
17 disclosure or obtained by the Receiving Party after the disclosure from a source who  
18 obtained the information lawfully and under no obligation of confidentiality to the  
19 Designating Party. Any use of Protected Material at trial shall be governed by a separate  
20 agreement or order.

### 21 4. DURATION

22 Even after final disposition of this litigation, the confidentiality obligations imposed  
23 by this Order shall remain in effect until a Designating Party agrees otherwise in writing or  
24 a court order otherwise directs. Final disposition shall be deemed to be the later of (1)  
25 dismissal of all claims and defenses in this action, with or without prejudice; and (2) final  
26 judgment herein after the completion and exhaustion of all appeals, rehearings, remands,  
27 trials, or reviews of this action, including the time limits for filing any motions or  
28 applications for extension of time pursuant to applicable law.

1 **5. DESIGNATING PROTECTED MATERIAL**

2 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each  
3 Party or Non-Party that designates information or items for protection under this Order  
4 must take care to limit any such designation to specific material that qualifies under the  
5 appropriate standards. The Designating Party must designate for protection only those  
6 parts of material, documents, items, or oral or written communications that qualify – so  
7 that other portions of the material, documents, items, or communications for which  
8 protection is not warranted are not swept unjustifiably within the ambit of this Order.

9 Mass, indiscriminate, or routinized designations are prohibited. Designations that  
10 are shown to be clearly unjustified or that have been made for an improper purpose (e.g.,  
11 to unnecessarily encumber or retard the case development process or to impose  
12 unnecessary expenses and burdens on other parties) expose the Designating Party to  
13 sanctions.

14 If it comes to a Designating Party's attention that information or items that it  
15 designated for protection do not qualify for protection that Designating Party must  
16 promptly notify all other Parties that it is withdrawing the mistaken designation.

17 5.2 Manner and Timing of Designations. Except as otherwise provided in this  
18 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or  
19 ordered, Disclosure or Discovery Material that qualifies for protection under this Order  
20 must be clearly so designated before the material is disclosed or produced.

21 Designation in conformity with this Order requires:

22 (a) for information in documentary form (e.g., paper or electronic documents,  
23 but excluding transcripts of depositions or other pretrial or trial proceedings), that the  
24 Producing Party affix the legend "CONFIDENTIAL" or "CONFIDENTIAL –  
25 RESTRICTED" to each page that contains protected material. If only a portion or portions  
26 of the material on a page qualifies for protection, the Producing Party also must clearly  
27 identify the protected portion(s) (e.g., by making appropriate markings in the margins).

28 ///

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A Party or Non-Party that makes original documents or materials available for inspection need not designate them for protection until after the inspecting Party has indicated which material it would like copied and produced. During the inspection and before the designation, all of the material made available for inspection shall be deemed “CONFIDENTIAL - RESTRICTED.” After the inspecting Party has identified the documents it wants copied and produced, the Producing Party must determine which documents, or portions thereof, qualify for protection under this Order. Then, before producing the specified documents, the Producing Party must affix the appropriate legend to each page that contains Protected Material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

(b) for testimony given in deposition or in other pretrial or trial proceedings, that the Designating Party identify on the record, before the close of the deposition, hearing, or other proceeding, all protected testimony.

(c) for information produced in some form other than documentary and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information or item is stored the legend “CONFIDENTIAL” or “CONFIDENTIAL – RESTRICTED.” If only a portion or portions of the information or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected portion(s).

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the Designating Party’s right to secure protection under this Order for such material. Upon timely correction of a designation, the Receiving Party must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

## **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of confidentiality at any time. Unless a prompt challenge to a Designating Party’s

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1 confidentiality designation is necessary to avoid foreseeable, substantial unfairness,  
 2 unnecessary economic burdens, or a significant disruption or delay of the litigation, a Party  
 3 does not waive its right to challenge a confidentiality designation by electing not to mount  
 4 a challenge promptly after the original designation is disclosed.

5       6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution  
 6 process by providing written notice of each designation it is challenging and describing the  
 7 basis for each challenge. To avoid ambiguity as to whether a challenge has been made, the  
 8 written notice must recite that the challenge to confidentiality is being made in accordance  
 9 with this specific paragraph of the Protective Order. The parties shall attempt to resolve  
 10 each challenge in good faith and must begin the process by conferring directly (in voice to  
 11 voice dialogue; other forms of communication are not sufficient) within 14 days of the date  
 12 of service of notice. In conferring, the Challenging Party must explain the basis for its  
 13 belief that the confidentiality designation was not proper and must give the Designating  
 14 Party an opportunity to review the designated material, to reconsider the circumstances,  
 15 and, if no change in designation is offered, to explain the basis for the chosen designation.  
 16 A Challenging Party may proceed to the next stage of the challenge process only if it has  
 17 engaged in this meet and confer process first or establishes that the Designating Party is  
 18 unwilling to participate in the meet and confer process in a timely manner.

19       6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court  
 20 intervention, the parties shall follow the Court's Standing Order in Civil Cases regarding  
 21 Discovery and Discovery Motions. The parties may file a joint letter brief regarding  
 22 retaining confidentiality within 21 days of the initial notice of challenge or within 14 days  
 23 of the parties agreeing that the meet and confer process will not resolve their dispute,  
 24 whichever is earlier. Failure by a Designating Party to file such discovery dispute letter  
 25 within the applicable 21 or 14 day period (set forth above) with the Court shall  
 26 automatically waive the confidentiality designation for each challenged designation. If,  
 27 after submitting a joint letter brief, the Court allows that a motion may be filed, any such  
 28 motion must be accompanied by a competent declaration affirming that the movant has



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1 complied with the meet and confer requirements imposed in the preceding paragraph. The  
 2 Court, in its discretion, may elect to transfer the discovery matter to a Magistrate Judge.

3 In addition, the parties may file a joint letter brief regarding a challenge to a  
 4 confidentiality designation at any time if there is good cause for doing so, including a  
 5 challenge to the designation of a deposition transcript or any portions thereof. If, after  
 6 submitting a joint letter brief, the Court allows that a motion may be filed, any motion  
 7 brought pursuant to this provision must be accompanied by a competent declaration  
 8 affirming that the movant has complied with the meet and confer requirements imposed by  
 9 the preceding paragraph. The Court, in its discretion, may elect to refer the discovery  
 10 matter to a Magistrate Judge.

11 The burden of persuasion in any such challenge proceeding shall be on the  
 12 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to  
 13 harass or impose unnecessary expenses and burdens on other parties) may expose the  
 14 Challenging Party to sanctions. Unless the Designating Party has waived the  
 15 confidentiality designation by failing to file a letter brief to retain confidentiality as  
 16 described above, all parties shall continue to afford the material in question the level of  
 17 protection to which it is entitled under the Producing Party's designation until the court  
 18 rules on the challenge.

## 19 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

20 7.1 Basic Principles. A Receiving Party may use Protected Material that is  
 21 disclosed or produced by another Party or by a Non-Party in connection with this case only  
 22 for prosecuting, defending, or attempting to settle this litigation. Such Protected Material  
 23 may be disclosed only to the categories of persons and under the conditions described in  
 24 this Order. When the litigation has been terminated, a Receiving Party must comply with  
 25 the provisions of section 13 below (FINAL DISPOSITION).

26 Protected Material must be stored and maintained by a Receiving Party at a location  
 27 and in a secure manner that ensures that access is limited to the persons authorized under  
 28 this Order.



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- 1           7.2    Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise  
 2 ordered by the court or permitted in writing by the Designating Party, a Receiving Party  
 3 may disclose any information or item designated “CONFIDENTIAL” only to:
- 4           (a)    the Receiving Party’s Outside Counsel of Record in this action, as well as  
 5 employees of said Outside Counsel of Record to whom it is reasonably necessary to  
 6 disclose the information for this litigation and who have signed the “Acknowledgment and  
 7 Agreement to Be Bound” that is attached hereto as Exhibit A;
- 8           (b)    the officers, directors, and employees (including House Counsel) of the  
 9 Receiving Party to whom disclosure is reasonably necessary for this litigation and who  
 10 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);
- 11          (c)    the insurance carriers of the Receiving Party to whom disclosure is  
 12 reasonably necessary for this litigation and who have signed the “Acknowledgment and  
 13 Agreement to Be Bound” (Exhibit A);
- 14          (d)    Experts (as defined in this Order) of the Receiving Party to whom disclosure  
 15 is reasonably necessary for this litigation and who have signed the “Acknowledgment and  
 16 Agreement to Be Bound” (Exhibit A);
- 17          (e)    the court and its personnel;
- 18          (f)    court reporters and their staff, professional jury or trial consultants, mock  
 19 jurors, and Professional Vendors to whom disclosure is reasonably necessary for this  
 20 litigation and who have signed the “Acknowledgment and Agreement to Be Bound”  
 21 (Exhibit A);
- 22          (g)    during their depositions, witnesses in the action to whom disclosure is  
 23 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be  
 24 Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the  
 25 court. Pages of transcribed deposition testimony or exhibits to depositions that reveal  
 26 Protected Material must be separately bound by the court reporter and may not be  
 27 disclosed to anyone except as permitted under this Stipulated Protective Order.
- 28          (h)    the author or recipient of a document containing the information or a

1 custodian or other person who otherwise possessed or knew the information.

2 7.3 Disclosure of “CONFIDENTIAL – RESTRICTED” Information or Items.

3 Unless otherwise ordered by the court or permitted in writing by the Designating Party, a  
4 Receiving Party may disclose any information or item designated “CONFIDENTIAL –  
5 RESTRICTED” only to:

6 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as  
7 employees of said Outside Counsel of Record to whom it is reasonably necessary to  
8 disclose the information for this litigation and who have signed the “Acknowledgment and  
9 Agreement to Be Bound” that is attached hereto as Exhibit A;

10 (b) the insurance carriers of the Receiving Party to whom disclosure is  
11 reasonably necessary for this litigation and who have signed the “Acknowledgment and  
12 Agreement to Be Bound” (Exhibit A);

13 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure  
14 is reasonably necessary for this litigation and who have signed the “Acknowledgment and  
15 Agreement to Be Bound” (Exhibit A);

16 (d) the court and its personnel;

17 (e) court reporters and their staff, professional jury or trial consultants, mock  
18 jurors, and Professional Vendors to whom disclosure is reasonably necessary for this  
19 litigation and who have signed the “Acknowledgment and Agreement to Be Bound”  
20 (Exhibit A);

21 (f) during their depositions, witnesses in the action to whom disclosure is  
22 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be  
23 Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the  
24 court. Pages of transcribed deposition testimony or exhibits to depositions that reveal  
25 Protected Material must be separately bound by the court reporter and may not be  
26 disclosed to anyone except as permitted under this Stipulated Protective Order.

27 (g) the author or recipient of a document containing the information or a  
28 custodian or other person who otherwise possessed or knew the information.

1 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**  
 2 **OTHER LITIGATION**

3 If a Party is served with a subpoena or a court order issued in other litigation that  
 4 compels disclosure of any information or items designated in this action as  
 5 “CONFIDENTIAL,” that Party must:

6 (a) promptly notify in writing the Designating Party. Such notification shall  
 7 include a copy of the subpoena or court order;

8 (b) promptly notify in writing the party who caused the subpoena or order to  
 9 issue in the other litigation that some or all of the material covered by the subpoena or  
 10 order is subject to this Protective Order. Such notification shall include a copy of this  
 11 Stipulated Protective Order; and

12 (c) cooperate with respect to all reasonable procedures sought to be pursued by  
 13 the Designating Party whose Protected Material may be affected.

14 If the Designating Party timely seeks a protective order, the Party served with the  
 15 subpoena or court order shall not produce any information designated in this action as  
 16 “CONFIDENTIAL” or “CONFIDENTIAL – RESTRICTED” before a determination by  
 17 the court from which the subpoena or order issued, unless the Party has obtained the  
 18 Designating Party’s permission. The Designating Party shall bear the burden and expense  
 19 of seeking protection in that court of its confidential material – and nothing in these  
 20 provisions should be construed as authorizing or encouraging a Receiving Party in this  
 21 action to disobey a lawful directive from another court.

22 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**  
 23 **PRODUCED IN THIS LITIGATION**

24 (a) The terms of this Order are applicable to information produced by a Non-  
 25 Party in this action and designated as “CONFIDENTIAL” or “CONFIDENTIAL –  
 26 RESTRICTED.” Such information produced by Non-Parties in connection with this  
 27 litigation is protected by the remedies and relief provided by this Order. Nothing in these  
 28 provisions should be construed as prohibiting a Non-Party from seeking additional

1 protections.

2 (b) In the event that a Party is required, by a valid discovery request, to produce  
3 a Non-Party's confidential information in its possession, and the Party is subject to an  
4 agreement with the Non-Party not to produce the Non-Party's confidential information,  
5 then the Party shall:

6 (1) promptly notify in writing the Requesting Party and the Non-Party  
7 that some or all of the information requested is subject to a  
8 confidentiality agreement with a Non-Party;

9 (2) promptly provide the Non-Party with a copy of the Stipulated  
10 Protective Order in this litigation, the relevant discovery request(s),  
11 and a reasonably specific description of the information requested;  
12 and

13 (3) make the information requested available for inspection by the Non-  
14 Party.

15 (c) If the Non-Party fails to object or seek a protective order from this court  
16 within 14 days of receiving the notice and accompanying information, the Receiving Party  
17 may produce the Non-Party's confidential information responsive to the discovery request.  
18 If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any  
19 information in its possession or control that is subject to the confidentiality agreement with  
20 the Non-Party before a determination by the court. Absent a court order to the contrary,  
21 the Non-Party shall bear the burden and expense of seeking protection in this court of its  
22 Protected Material.

## 23 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

24 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
25 Protected Material to any person or in any circumstance not authorized under this  
26 Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the  
27 Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all  
28 unauthorized copies of the Protected Material, (c) inform the person or persons to whom

1 unauthorized disclosures were made of all the terms of this Order, and (d) request such  
 2 person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is  
 3 attached hereto as Exhibit A.

4 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**  
 5 **PROTECTED MATERIAL**

6 When a Producing Party gives notice to Receiving Parties that certain inadvertently  
 7 produced material is subject to a claim of privilege or other protection, the obligations of  
 8 the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B).  
 9 This provision is not intended to modify whatever procedure may be established in an e-  
 10 discovery order that provides for production without prior privilege review. Pursuant to  
 11 Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the  
 12 effect of disclosure of a communication or information covered by the attorney-client  
 13 privilege or work product protection, the parties may incorporate their agreement in the  
 14 stipulated protective order submitted to the court.

15 **12. MISCELLANEOUS**

16 12.1 Right to Further Relief. Nothing in this Order abridges the right of any  
 17 person to seek its modification by the court in the future.

18 12.2 Right to Assert Other Objections. By stipulating to the entry of this  
 19 Protective Order no Party waives any right it otherwise would have to object to disclosing  
 20 or producing any information or item on any ground not addressed in this Stipulated  
 21 Protective Order. Similarly, no Party waives any right to object on any ground to use in  
 22 evidence of any of the material covered by this Protective Order.

23 12.3 Filing Protected Material. Without written permission from the Designating  
 24 Party or a court order secured after appropriate notice to all interested persons, a Party may  
 25 not file in the public record in this action any Protected Material. A Party that seeks to file  
 26 under seal any Protected Material must comply with Civil Local Rule 79-5. Protected  
 27 Material may only be filed under seal pursuant to a court order authorizing the sealing of  
 28 the specific Protected Material at issue. Pursuant to Civil Local Rule 79-5, a sealing order

will issue only upon a request establishing that the Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled to protection under the law. If a Receiving Party's request to file Protected Material under seal pursuant to Civil Local Rule 79-5(d) is denied by the court, then the Receiving Party may file the information in the public record pursuant to Civil Local Rule 79-5(e) unless otherwise instructed by the court.

### **13. FINAL DISPOSITION**

Within 60 days after the final disposition of this action, as defined in paragraph 4, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

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1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2 DATED: April 30, 2020 FLESHER SCHAFF & SCHROEDER, INC.

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By: /s/  
JEREMY J. SCHROEDER, ESQ.  
Attorneys for Plaintiffs BNSF Railway  
Company and National Railroad Passenger  
Corporation

DATED: April 30, 2020 SINNOTT, PUEBLA,  
CAMPAGNE & CURET, APLC

By: /s/  
BLAISE S. CURET, ESQ.  
Attorneys for Defendant Zurich American  
Insurance Company

DATED: April 30, 2020 CLAPP, MORONEY, VUCINICH, BEEMAN +  
SCHEELEY

By: /s/  
ANDREW K. MURPHY, ESQ.  
Attorneys for Defendant Flatiron West, Inc.

DATED: April 30, 2020 CONTRA COSTA COUNTY

By: /s/  
PATRICK L. HURLEY, ESQ.  
Attorneys for Defendant Contra Costa County



1 DATED: April 30, 2020

HAYES SCOTT BONINO ELLINGSON  
GULSANI SIMONSON & CLAUSE, LLP


4 By: /s/

5 RYAN Z. KELLER, ESQ.

6 Attorneys for Defendant Allied World  
Assurance Company (U.S.), Inc.

7 PURSUANT TO STIPULATION, IT IS SO ORDERED.

8 DATED: May 4, 2020

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11 YVONNE GONZALEZ ROGERS  
12 UNITED STATES DISTRICT COURT JUDGE  
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**EXHIBIT A****ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, \_\_\_\_\_ [print or type full name], of  
 \_\_\_\_\_ [print or type full address], declare under penalty of perjury that I  
 have read in its entirety and understand the Stipulated Protective Order that was issued by  
 the United States District Court for the Northern District of California on [date] in the case  
 of \_\_\_\_\_ [insert formal name of the case and the number and initials assigned to it  
 by the court]. I agree to comply with and to be bound by all the terms of this Stipulated  
 Protective Order and I understand and acknowledge that failure to so comply could expose  
 me to sanctions and punishment in the nature of contempt. I solemnly promise that I will  
 not disclose in any manner any information or item that is subject to this Stipulated  
 Protective Order to any person or entity except in strict compliance with the provisions of  
 this Order.

I further agree to submit to the jurisdiction of the United States District Court for  
 the Northern District of California for the purpose of enforcing the terms of this Stipulated  
 Protective Order, even if such enforcement proceedings occur after termination of this  
 action.

I hereby appoint \_\_\_\_\_ [print or type full name] of  
 \_\_\_\_\_ [print or type full address and telephone  
 number] as my California agent for service of process in connection with this action or any  
 proceedings related to enforcement of this Stipulated Protective Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_